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Supreme Court, U.S.
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No. 04-

IN THE

Supreme Court of the United States

DAVID GIBSON, an individual and ALL UNKNOWN INDIVIDUALS who may claim any interest in the real property which is the subject of these proceedings, individually jointly and severally,

Petitioner,

v.

ORSON MERRILL and LYDIA MERRILL, Husband and Wife,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IDAHO

SUPPLEMENTAL APPENDIX

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APPENDIX — FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA FILED APRIL 3, 2002

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Case No. CV OC 01-01181 D

ORSON MERRILL and LYDIA MERRILL, husband and wife,

Plaintiffs,

vs.

DAVID GIBSON, an individual, and ALL UNKNOWN INDIVIDUALS who may claim any interest in the real property which is the subject of these proceedings, individually, jointly and severally,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER, having come before the Court pursuant to a Court trial wherein Thomas G. Maile, IV, Attorney at Law, appeared on behalf of Plaintiffs Orson Merrill and Lydia Merrill, husband and wife, and Lydia Merrill appeared individually and further acting in her position as Guardian

ad Litem for the benefit of Orson Merrill, an incapacitated person for the purposes of these legal proceeding, and Vernon K. Smith, Attorney at Law, appeared on behalf of Defendant David Gibson, and the Plaintiffs having set forth a Complaint seeking quiet title to certain real property which is the subject of this action, together with an Order adjudging and decreeing that Plaintiffs are the owners and are entitled to possession of said property and that Defendant DAVID GIBSON, and all those claiming by and through him, be barred and foreclosed from all claims of interest both equitable and legal to the real property which is described hereinafter.

AND WHEREAS, Defendant David Gibson raised certain issues by Affirmative Defenses, and further alleged (consistent with a Counterclaim) breach of a contract dated September 3, 1991, adverse possession raised on a written instrument, adverse possession based upon an oral agreement, and a constructive trust and/or a resulting trust, and

THE COURT having commenced a Court Trial on March 25, 2002, and having considered testimony, exhibits and evidence, and the Court having entered its Findings of Fact and Conclusions of Law on the record during the hearing held March 27, 2002, which findings and conclusions are incorporated by reference herein, both as to the Court's findings of fact and conclusions of law, and in addition thereto, the Court finds and concludes as follows:

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FINDINGS OF FACT

1. The Court has jurisdiction over the real property and the parties above-named.

2. The real property described herein and which is the subject of this action is located in Ada County, Idaho, and is more particularly described as follows:

> The west one-half of the southeast one-quarter of the southeast one-quarter of Section 31, Township 3 North, Range 2 East, Boise-Meridian, Ada County, Idaho,

3. Defendant David Gibson is a married person who is married to Patricia Gibson, and at all relative times herein including the date in which David Gibson has asserted an interest in the property has been married to Patricia Gibson.

4. Defendant David Gibson has historically been a member of a group known as "The Patriots" and does not personally believe in providing written agreements and, further, prefers to pay for transactions only in cash, with no receipts. Such action on the part of the Defendant makes it difficult in the current action to add credibility to the Defendant's assertions that there were oral contracts affecting the subject real property. Additionally, in 1991, David Gibson had problems and disputes with the Internal Revenue Service and after such experience, he should have been savvy enough to realize that receipts and written documents are important.

5. That Plaintiffs, because of their age (Orson Merrill specifically having problems related to mental functioning from the late 1980's through the current date) and the Court having found that Orson Merrill was incapable of personally participating in this trial, appointed Lydia Merrill as Guardian ad Litem for the benefit of Orson Merrill throughout the course of these proceedings, finds that written documentation would have been more desirable than relying upon memory. Lydia Merrill's recollection of the events arising out of the 1991 real estate closing which is the subject of this action relative to any agreement with David Gibson were vague and the Court did not rely on Lydia Merrill's testimony and it was of no aid to the Court in analyzing and construing the facts in this case. This again underlines the importance of providing written documentation regarding real estate transactions.

6. The real estate transaction was complete and unambiguous in its terms consistent with the Warranty Deed executed from the sellers to the grantees, Lydia and Orson Merrill, on November 7, 1991. In addition, there were closing documents and title insurance insuring the Merrills as owners in fee simple absolute of the subject property. In 1991, there were no recorded interests of David Gibson relating to the real property in question.

7. David Gibson ~~appeared to engineer and orchestrate~~ attempted [to] purchase of the subject property and personally attempted to purchase the property on or about September 3, 1991. However, Mr. Gibson was unable to purchase the property and Lydia and Orson Merrill purchased the property on November 7, 1991.

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8. There was an Option to Purchase signed by the parties after the closing. The Option to Purchase was vague; however, it was executed by the parties in question and it afforded David Gibson an interest in this property at some point in time. However, said purchase interest had to be exercised on or before January 1, 1997, which David Gibson failed to do. The only evidence which challenged the Warranty Deed and Option to Purchase was David Gibson's uncorroborated testimony. There was no corroborating testimony verifying or supporting David Gibson's recollection of an oral agreement between the parties in this transaction.

9. Although claiming to have an oral contract for the purchase of the subject property, David Gibson consistently took the position before various tribunals (including the Ada County Courts, Ada County Zoning Commission and the Ada County Highway District) that he was on the property either as a manager and/or as a lessee with an option to purchase. Such acts and declarations were completely inconsistent with any oral agreement that Mr. Gibson ~~had to purchase the property or that he~~ was the owner of the property.

10. Through his actions and testimony, David Gibson demonstrated that his version of the facts was that he allowed the Merrills to be placed as legal, titled owners of the subject property so the Internal Revenue Service could not lien the property, since David Gibson had outstanding IRS liens at the time. Such an attempt to shield property from the IRS, coupled with the inconsistent statements made to the Ada County Courthouse, Ada County Highway District and Ada County Planning and Zoning Commission, do not support a

reasonable inference that David Gibson was telling the truth in the current Court proceedings, as his prior actions are inconsistent and unreliable.

11. Certain improvements were made to the property by David Gibson that were not authorized and for which he did not seek or obtain permission from the Plaintiffs, to-wit, the installation of a well in 1997 after the expiration of the lease option date and which was done for the purpose of providing water to Defendant's commercial enterprise and used for the purpose of increasing value to his compost business. Such improvement became a fixture to the property and without an agreement between the parties affecting such an improvement, there can be no legitimate claim for David Gibson to be compensated for such expense.

In addition, there was testimony related to the improvement by the Highway District of a roadway leading to the property; however, such a roadway was contractually committed to by David Gibson as a lessee/manager of the property and is revokable by the Ada County Highway District. The roadway improvements had more of an impact and benefit to Defendant Gibson's commercial enterprises, and any benefit that was provided to the subject property was remote and was outweighed by the commercial benefits to David Gibson's commercial operation on the property.

12. David Gibson paid at closing the sum of $5,000.00. The evidence is unclear as to the reason for such payment of money. It could have been paid for a variety of reasons; however, not having exercised his option to purchase the real property, Defendant Gibson's $5,000.00 payment is forfeited

as of this time and there can be no claim for unjust enrichment, to-wit, for David Gibson to return demand of the $5,000 payment after twelve years of use of the property is unreasonable and the sum could be construed as either a gift or a option consideration for the lease option, among other things.

13. Plaintiffs have paid all the taxes on the subject property and verified the same with adequate business records and family receipts. David Gibson had no written verification he had taxes on the subject property.

14. David Gibson testified the lease option and other incriminating documents were drafted in an attempt to keep the Merrills from litigation, either with Ada County Zoning and/or the Ada County Courts. The Court finds no merit to such assertion in that David Gibson was named as a Defendant in said litigation before the Merrills even purchased the property and the Complaint was against David Gibson as lessee, occupant, owner and/or resident of the subject property. Mr. Gibson as the occupant of the property was the only target of such Ada County proceedings and, consequently, the Merrills needed no protection in sharing a lease option created to avoid any potential prosecution by Ada County.

Appendix

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court hereby enters the following Conclusions of Law:

1. This Court has subject matter and personal jurisdiction over the parties and the real property subject hereto.

2. Plaintiffs Orson Merrill and Lydia Merrill were grantees of the subject property by warranty deed in fee simple absolute as of November 7, 1991. The Plaintiffs currently own the property free of any claims of David Gibson and any person claiming any interest or right by or through David Gibson.

3. David Gibson is a married person who is married to Patricia Gibson, and at all relative times herein including the date in which David Gibson has asserted an interest in the property has been married to Patricia Gibson. That David Gibson's community interest if any in said property is extinguished.

4. The option contract expired as of January 7, 1997, and Defendant David Gibson has no interest, legal or equitable, in the subject real property and is construed as a tenant at sufferance and is currently in possession of the property and is storing personal effects upon the property in violation of Plaintiffs' rights.

5. Title to the real property described herein and which is the subject of this action is located in Ada County, Idaho, and is more particularly described as follows:

> The west one-half of the southeast one-quarter of the southeast one-quarter of Section 31, Township 3 North, Range 2 East, Boise-Meridian, Ada County, Idaho,

Said real property is quieted in all respects as against David Gibson and any and all persons claiming an interest thereto, by and through David Gibson, and all equitable and legal interest in said real property is confirmed in the names of Lydia Merrill and Orson Merrill, husband and wife.

6. Defendant Gibson is forthwith prohibited from remaining on or in possession on the subject real property and is further required to remove any and all personal property immediately from the subject real property, and Plaintiffs hereinafter shall be afforded full access and peaceful and quiet enjoyment of the subject property.

7. Plaintiffs are the prevailing parties herein and are entitled to costs pursuant to Rule 55 of the Idaho Rules of Civil Procedure.

DATED This 3d day of April, 2002.

s/ [illegible]
Judge